

<b>DIVISION OF MINED LAND RECLAMATION</b>		<b>PROCEDURE NO.</b>	3.3.08
<b>PROCEDURES MANUAL</b>		<b>ISSUE DATE</b>	March 12, 1997
<b>SUBJECT</b>	Alternative Enforcement Action	<b>Section</b>	Enforcement
		<b>Last Revised</b>	2/8/93

**OBJECTIVE AND INTENT :**

To initiate prompt, immediate alternative action to ensure the permittee or operator complies with the requirements of the Act and regulations.

**Alternative Enforcement Action Options -**

Per 4 VAC 25-130-845.15(b)(2), a failure to abate Cessation Order automatically expires 30 days from service.

If the permittee or operator has failed or refused to comply with the order, the Division shall issue a show cause order within 5 days and/or take alternate enforcement action within 30 days after expiration of the failure to abate CO.

When determining the type of alternative action to pursue, the Field Inspector must discuss the particular situation with the Supervisor and Reclamation Services Manager. The Inspector shall prepare and submit a fact sheet outlining all pertinent historical information about the situation to the Reclamation Services Manager via the Supervisor. A **memo of recommendation**, signed by the Inspector and Supervisor, shall accompany the fact sheet.

In determining the most effective option to recommend (items #1 - 4 listed below), the Field Inspector and Supervisor must consider:

- whether the site is permitted or unpermitted,
- the operator’s willingness to comply,
- the operator’s ability to comply, and
- the operator’s past history of violation and payment of civil penalties.

The Reclamation Services Manager may discuss the situation with the Assistant Attorney General and other appropriate staff when deciding upon the course of action to pursue. The Division may pursue, but is not limited to:

1. the issuance of a **Show Cause Order** (45.1-245C) - see Procedure #3.3.10.
  - VAC 25-130-843.13 states that the Director shall issue a Show Cause Order to a permittee when it is determined that a pattern of violations of any requirements of the Act exists or has existed and these violations were caused by the permittee’s willful or unwarranted failure to comply with such requirements.
  - Per Procedures #3.3.09 and #3.3.10, the Inspector shall initiate show cause proceedings to revoke the permit and to initiate bond forfeiture proceedings within 5 days after the expiration of the failure to abate CO.
2. pursuing **Civil Action for Injunctive Relief** (45.1-245E ) **and/or Criminal Action** (45.1-246E).
  - Each situation must be evaluated and discussed with the Supervisor and Reclamation Services Manager. The Reclamation Services Manager may solicit the Assistant Attorney General’s advice in determining the proper course of action to pursue. If Criminal Penalties pursued - the Inspector shall cooperate with the Commonwealth Attorney in obtaining necessary warrants or summons.
3. assessing **Individual Civil Penalties** and/or pursuing **individual criminal penalties** (see 45.1-246F and Part 4 VAC 25-130-846).

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4. pursuing **Bond Forfeiture** (4 VAC 25-130-800.50) - see Procedure #3.3.09.